

# CHANGE WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

## Statement of Explanation

### Change to Title 18. Public Revenue

#### Regulation 1507, *Technology Transfer Agreements*

##### **A. Factual Basis**

California Code of Regulations, title 18, section (Regulation) 1507, *Technology Transfer Agreements*, implements, interprets, and makes specific the provisions of subdivisions (c)(10) of Revenue and Taxation Code sections 6011 and 6012, which define the term “technology transfer agreement” (TTA) for purposes of the Sales and Use Tax Law (Rev. & Tax. Code, § 6001 et seq.) and provide that the terms “sales price” and “gross receipts” do not include “[t]he amount charged for intangible personal property transferred with tangible personal property in any technology transfer agreement.” Regulation 1507, subdivision (a)(1) further defines the term “technology transfer agreement” as used in Revenue and Taxation Code sections 6011 and 6012 and the last sentence in the second paragraph of Regulation 1507, subdivision (a)(1) provides that “A technology transfer agreement also does not mean an agreement for the transfer of prewritten software as defined in subdivision (b) of Regulation 1502, Computers, Programs, and Data Processing.”

However, in [\*Nortel Networks, Inc., v. State Board of Equalization\*](#) (2011) 191 Cal.App.4th 1259, 1278,<sup>1</sup> the Court of Appeal held that:

To the extent that *regulation 1507, subdivision (a)(1)* excludes from the definition of a TTA prewritten computer programs that are subject to a copyright or patent, the regulation exceeds the scope of the Board's authority and does not effectuate the purpose of the TTA statutes: It is, for these reasons, invalid.

Therefore, the State Board of Equalization (Board) proposes to delete the last sentence from the second paragraph of Regulation 1507, subdivision (a)(1), which was held invalid by the Court of Appeal.

The Board has determined that this change to Regulation 1507 is appropriate for processing under California Code of Regulations, title 1, section (Rule) 100 because the change makes the regulation consistent with the Court of Appeal’s holding in *Nortel* and does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision. Furthermore, the change is expressly authorized by the provisions of Rule 100, subdivision (a)(3) providing that “[c]hanges without regulatory effect include, but are not limited to . . . (3) deleting a regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction.”

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<sup>1</sup> The California Supreme Court denied the State Board of Equalization’s petition for review on April 27, 2011, and the Court of Appeal’s decision is now final.

## **B. Proposed Change to Regulation 1507**

Proposed change to Regulation 1507:

Regulation 1507. Technology Transfer Agreements.

### **(a) Definitions.**

(1) "Technology transfer agreement" means an agreement evidenced by a writing (e.g., invoice, purchase order, contract, etc.) that assigns or licenses a copyright interest in tangible personal property for the purpose of reproducing and selling other property subject to the copyright interest. A technology transfer agreement also means a written agreement that assigns or licenses a patent interest for the right to manufacture and sell property subject to the patent interest, or a written agreement that assigns or licenses the right to use a process subject to a patent interest.

A technology transfer agreement does not mean an agreement for the transfer of any tangible personal property manufactured pursuant to a technology transfer agreement, nor an agreement for the transfer of any property derived, created, manufactured, or otherwise processed by property manufactured pursuant to technology transfer agreement. ~~A technology transfer agreement also does not mean an agreement for the transfer of prewritten software as defined in subdivision (b) of Regulation 1502, Computers, Programs, and Data Processing.~~

Example No. 1: . . . (unchanged).

Example No. 2: . . . (unchanged).

Example No. 3: . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

(4) . . . (unchanged).

### **(b) Application of Tax**

(1) . . . (unchanged):

(A) . . . (unchanged);

(B) . . . (unchanged); or,

(C) . . . (unchanged).

(2) . . . (unchanged).

(3) . . . (unchanged).

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011 and 6012, Revenue and Taxation Code; Preston v. State Board of Equalization (2001) 25 Cal. 4th 197, 105 Cal. Rptr. 2d 407.